

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW WILLIAM DEMOSS,

Defendant-Appellant.

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UNPUBLISHED

July 22, 2003

No. 239695

Otsego Circuit Court

LC No. 01-002664-FC

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for first-degree criminal sexual conduct, MCL 750.520b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of trial counsel, who failed to object to a question regarding defendant's prior homosexual behavior. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defense counsel opened the door to the prosecutor's question about prior acts. Defendant had previously teased the twelve-year-old complainant with homosexual remarks. Defense counsel asked complainant's mother if she believed defendant was just joking, since she allowed her son to go out driving with defendant. Complainant's mother answered that she knew defendant was not joking because of her prior conversations with defendant. On redirect examination, the prosecutor clarified that defendant had told complainant's mother that he had engaged in homosexual acts with adult males. Defense counsel opened the door for the prosecutor's question, and a MRE 404(b) issue was not raised.

Defendant does not claim that he informed trial counsel about his homosexual behavior, or that counsel was aware that he told complainant's mother about it. In the absence of this knowledge, counsel made a reasonable decision to ask the question to attempt to support his case. Defendant has failed to overcome the presumption that counsel's action was sound trial

strategy. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). If counsel's action was unreasonable, there is no showing that but for the admission of this evidence, the result of the proceeding would have been different. *Id.*

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens